

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,
WASHINGTON DEPARTMENT
LICENSING, et al.

Plaintiffs,

v.

THE TRIBAL COURT FOR THE
CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA
NATION, and its CHIEF TRIBAL
COURT JUDGE TED STRONG, and
the CONFEDERATED TRIBES
AND BANDS OF THE YAKAMA
NATION, a Federally Recognized
Tribe,

Defendants.

NO. CV-12-3152-LRS

**ORDER GRANTING
MOTION FOR PRELIMINARY
INJUNCTION, *INTER ALIA***

BEFORE THE COURT is the Plaintiffs' Motion For Preliminary Injunction (ECF No. 15). The motion was heard with oral argument on an expedited basis on January 7, 2013. This order memorializes and elaborates upon the oral ruling provided by the court on January 7.

Whether a tribal court has exceeded the lawful limits of its jurisdiction is a federal question under 28 U.S.C. §1331. *National Farmers Union Insurance Companies v. Crow Tribe Of Indians*, 471 U.S. 845, 852-53, 105 S.Ct. 2447 (1985). Accordingly, this court has subject matter jurisdiction to determine whether the Yakama Nation Tribal Court has colorable or plausible jurisdiction to enjoin the Plaintiffs from taking further action to terminate the 1994 Consent

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1 Decree, as modified in 2006, and to order the Plaintiffs to resume mediation in
2 accordance with the terms of the Consent Decree.

3 The 1994 Consent Decree entered by this court was the result of an action
4 filed by the Yakama Nation in 1993 (CY-93-3050-AAM) which invoked this
5 court's federal question jurisdiction to adjudicate disputes involving treaties
6 between Indian tribes and the United States. In 2004, the Yakama Nation filed a
7 petition (CV-04-3079-CI) to invoke this court's continuing jurisdiction under
8 Paragraph 4.2 of the Consent Decree to enforce the terms of said decree. That
9 petition resulted in the 2006 modification of the Consent Decree embodied in a
10 document titled "Settlement Agreement, Agreed Changes To Consent Decree,
11 And Order." The 2006 modification resulted in the deletion of Paragraphs 4.1
12 and 4.2 of the Consent Decree "for maintaining the continuing jurisdiction of
13 the court."

14 In the present captioned action, the Plaintiffs' Complaint does not attempt
15 to invoke the "continuing jurisdiction" provisions of deleted Paragraphs 4.1
16 and/or 4.2. The fact these provisions were deleted does not divest this court of
17 subject matter jurisdiction over a Consent Decree which it entered. This court
18 retains exclusive inherent jurisdiction over a Consent Decree of which it cannot
19 be divested, even by a stipulation of the parties. As long as the final remedy
20 under a consent decree has not been achieved, the court entering the decree
21 retains subject matter jurisdiction to interpret and enforce the decree's terms.

22 *Nehmer v. U.S. Dept. Of Veterans Affairs*, 494 F.3d 846, 860 (9th Cir.

23 2007)("well-established that the district court has the inherent authority to
24 enforce compliance with a consent decree that it has entered in an order, to hold

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parties in contempt for violating the terms therein, and to modify a decree”).¹ Here, the Yakama Nation asserts the final remedy under the Consent Decree has not been achieved. Furthermore, the court entering a consent decree is also the tribunal with the power to determine whether it has been fully complied with and should be dissolved or vacated. *Bd. of Educ. of Okla. City Pub. Schs. v. Dowell*, 498 U.S. 237, 247-50, 111 S.Ct. 630 (1991). Here, the State of Washington seeks to dissolve or vacate the Consent Decree.

Paragraph 4.1 of the Consent Decree referred to retention of jurisdiction for a period of one year “for the limited purpose of ensuring compliance with this Consent Decree,” and Paragraph 4.2 referred to initiation of action “in this Court at any time for the limited purpose of requesting the Court to enforce the terms of this Consent Decree.” In the present action, Plaintiffs do not seek to enforce the terms of the Consent Decree or otherwise ensure compliance with the Consent Decree. They seek a formal declaration that the Consent Decree has been terminated.

On the other hand, the Yakama Nation is seeking to enforce the terms of the Consent Decree by way of the action it commenced in the Yakama Nation Tribal Court seeking to compel the Plaintiffs to continue to engage in mediation with the Nation. In that regard, it is noted that Paragraph 4.6 of the

¹*Beaver v. Kingman*, 246 Kan. 145, 785 P. 2d 998 (1990), a case relied upon by Defendants, is not to the contrary. The consent judgment in that case had an expiration date written into its terms which had been exceeded. Here, the Consent Decree does not contain such an expiration date. The *Beaver* court acknowledged that “[u]nless the consent judgment has an expiration date written into its terms, it remains in effect for an indefinite period until it is dissolved.” *Id.* at 148.

1 Consent Decree was not deleted by way of the 2006 modification. Paragraph
2 4.6 provides:

3 Neither the Yakama Indian Nation, nor the State of Washington,
4 nor officers acting on either government's behalf, may petition **the**
5 **Court** to enforce this Consent Decree unless (a) the dispute
6 resolution process described in ¶4.7 has been followed in good
faith to completion without successful resolution, or unless (b) the
other party fails to enter into the dispute resolution process or
terminates the process before its completion.

7 (Emphasis added).

8 “The Court” is an obvious reference to the federal district court which
9 entered the Consent Decree. Pursuant to the plain terms of Paragraph 4.6, the
10 Yakama Nation was obligated to bring its petition to enforce the Consent
11 Decree in this court, alleging the State of Washington “terminate[d] the [dispute
12 resolution process] before its completion.” Paragraph 4.6 does not authorize
13 that petition to be brought in tribal court

14 Paragraph H of the 2006 “Settlement Agreement, Agreed Changes To
15 Consent Decree, And Order” states:

16 The parties agree that the provisions of ¶4.1 and ¶4.2 for
17 maintaining the continuing jurisdiction of the court should be
18 deleted. The parties agree to resolve further disputes exercising
19 mutual good faith on a government to government basis and, **to the**
extent they are unable to resolve such disputes, the dispute
resolution process in ¶4.7 shall apply.

20 (Emphasis added). Paragraph 4.6 specifically refers to the dispute resolution
21 process of Paragraph 4.7 and allows either party to petition “the Court” (the
22 federal district court) to enforce the Consent Decree if the dispute resolution
23 process has been followed in good faith to completion without successful
24 resolution, or a party fails to enter into the dispute resolution process or
25 terminates the process before its completion. Because of Paragraph 4.6, it is not
26 reasonable for the Yakama Nation to believe the tribal court can be used to
27 enforce the dispute resolution clause at Paragraph 4.7. And because of
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1 Paragraph 4.6 and this court's exclusive inherent jurisdiction over a Consent
2 Decree entered by it, it was not necessary for Defendants to expressly disclaim
3 tribal court jurisdiction in the Consent Decree.

4 Because of this court's exclusive inherent and express jurisdiction to
5 enforce compliance with the Consent Decree, and to dissolve or vacate the
6 Consent Decree, the Yakama Nation Tribal Court's exercise of subject matter
7 jurisdiction is neither colorable or plausible.² Accordingly, exhaustion of tribal
8 court remedies is not required. It is "plain" that tribal court jurisdiction is
9 lacking and therefore, exhaustion would serve no purpose other than delay.
10 *Nevada v. Hicks*, 533 U.S. 353, 369, 121 S.Ct. 2304 (2001).

11 The Yakama Nation has waived its sovereign immunity to the present
12 action by virtue of the Nation having commenced the previous action which
13 resulted in the Consent Decree over which this court retains jurisdiction.
14 Because Yakama Nation Tribal Court Judge Strong acted outside the scope of
15 his authority in asserting jurisdiction, it is proper to enter injunctive relief
16 against him. Even were there not a waiver of tribal sovereign immunity,
17 however, the action against Judge Strong would not be barred. "Tribal
18 sovereign immunity does not bar a suit for prospective relief against tribal
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20 ²Because of the Consent Decree, the court deems it unnecessary to discuss at
21 length the principles articulated in U.S. Supreme Court and Ninth Circuit
22 decisions governing tribal jurisdiction over non-Indian entities, other than to
23 agree with the Plaintiffs that the Consent Decree does not fit within the
24 consensual relationship exception set forth in *Montana v. United States*, 450
25 U.S. 544, 565, 101 S.Ct. 1245 (1981), and to observe that there is no authority
26 which has held that a State sovereign entity is subject to the jurisdiction of a
27 tribal court.
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officers allegedly acting in violation of federal law.” *Burlington N. R.R. Co. v. Blackfeet Tribe*, 924 F.2d 899, 901 (9th Cir. 1991), *overruled on other grounds* by *Big Horn County Elec. Coop., Inc. v. Adams*, 219 F.3d 944, 953 (9th Cir. 2000).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 129 S.Ct. 365, 374 (2008). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Id.* at 376. There is a strong likelihood the Plaintiffs will prevail on their argument that the Yakama Nation Tribal Court lacks jurisdiction to adjudicate the parties’ dispute regarding the Consent Decree. Furthermore, the Plaintiffs are likely to suffer irreparable harm if they are compelled to litigate the dispute in a forum which does not have jurisdiction. For the same reason, the balance of the equities tips in favor of Plaintiffs. Defendants are not deprived of a forum to entertain their claims because those claims will be heard in this court instead of tribal court.³ It is in the public interest that the parties’ dispute be resolved in the forum which is properly vested with subject matter jurisdiction over the dispute.

Plaintiffs’ Motion For Preliminary Injunction (ECF No. 15) is **GRANTED** and it is hereby **ORDERED** that:

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³The Yakama Nation’s Cross-Motion For Preliminary Injunction (ECF No. 44), which has been fully briefed, will be heard by this court with telephonic argument on January 31, 2013 at 2:30 p.m.

1 1. Pending further order of this court⁴, Defendants herein, their
2 representatives, agents and persons acting in concert with them, are
3 **ENJOINED** from conducting, initiating, or participating in further proceedings
4 under Yakama Nation Tribal Court Cause No. R-13-019.

5 2. Pending further order of this court, all orders of the Yakama Nation
6 Tribal Court in Cause No. R-13-019 are **ENJOINED, STAYED** and without
7 legal effect. These orders include Chief Judge Strong's Temporary Restraining
8 Order of December 6, 2012, his orders of December 20, 2012, provisionally
9 finding the Defendants to be in contempt, and his order scheduling and
10 requiring Plaintiffs herein to participate in tribal court proceedings set for
11 January 17, 2013.

12 3. Pending further order of this court, Defendants herein, their
13 representatives, agents and persons acting in concert with them, are
14 **ENJOINED** from conducting, initiating, or participating in any further
15 proceedings or orders in Yakama Nation Tribal Court concerning this court's
16 Consent Decree.

17 4. Plaintiffs will not be required to post a bond in order to secure this
18 preliminary injunction.⁵

19 Defendants' Motion To Strike (ECF No. 41) is **DENIED**. This court is
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21 ⁴The Yakama Nation's Motion To Dismiss (ECF No. 67), filed January 6,
22 2013, is noted for hearing without oral argument on February 27, 2013. The
23 Nation has requested oral argument and, at the appropriate time, the court will
24 determine if oral argument is warranted.

25 ⁵In the Ninth Circuit, the district court retains discretion "as to the amount of
26 security required, *if any*." *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011),
27 quoting *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009).
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1 fully informed of the parties' respective positions regarding interpretation of the
2 terms of the Consent Decree and has relied only on that evidence which is
3 admissible and relevant in weighing the parties' arguments concerning
4 jurisdiction and whether issuance of a preliminary injunction is warranted.

5 **IT IS SO ORDERED.** The District Court Executive is directed to
6 forward copies of this order to counsel of record.

7 **DATED** this 10th day of January, 2013.

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9 *s/Lonny R. Suko*

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LONNY R. SUKO
11 United States District Court Judge
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